

Sue Ferguson

# United States District Court

RECEIVED

DISTRICT OF NEW MEXICO

99 APR -6 AM 7:42

AMIGOS BRAVOS, and  
NEW MEXICO CITIZENS FOR CLEAN  
AIR AND WATER

PERMITS BRANCH

SUMMONS IN A CIVIL CASE

V.

CASE NUMBER:

CIV 99 00327  
DON J. SVET

RICHARD L. PUGLISI

U.S. ENVIRONMENTAL  
PROTECTION AGENCY (EPA), and CAROL  
BROWNER, EPA ADMINISTRATOR, and  
GREG COOK, EPA REGIONAL ADMINISTRATOR,  
REGION VI

TO: (Name and address of defendant)

Carol Browner, Administrator  
Environmental Protection Agency  
401 M Street  
Washington, D.C. 20460

Greg Cook, Regional Administrator, Region VI  
U.S. Environmental Protection Agency  
1445 Ross Avenue  
Suite 1200  
Dallas, Texas 75202-2733

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Grove Burnett  
WESTERN ENVIRONMENTAL LAW CENTER  
P.O. Box 1507  
Taos, New Mexico 87571

an answer to the complaint which is herewith served upon you, within Sixty ~~Twenty~~ (60) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

ROBERT M. MARCH, Clerk

CLERK

Patricia S. ZH

(BY) DEPUTY CLERK

DATE

MAR 25 1999



188218

# RETURN OF SERVICE

Service of the Summons and Complaint was made by me <sup>1</sup>	DATE
NAME OF SERVER (PRINT)	TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served: \_\_\_\_\_
- ☒ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.  
Name of person with whom the summons and complaint were left: \_\_\_\_\_
- ☐ Returned unexecuted: \_\_\_\_\_
- ☐ Other (specify): \_\_\_\_\_

## STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
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## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

# United States District Court

District of New Mexico

Office of the Clerk

Hermis Chavez Federal Building

and U.S. Court House

P.O. Box 689

Albuquerque, New Mexico 87103

Robert M. March  
Clerk of Court  
(505) 248-8052  
FAX (505) 248-3124

Divisional Offices  
P.O. Box 2384  
Santa Fe, NM 87504-2384  
(505) 988-6481  
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200 East Griggs  
Las Cruces, NM 88001  
(505) 527-6800  
FAX (505) 527-8817

TO COUNSEL OR PRO SE LITIGANT

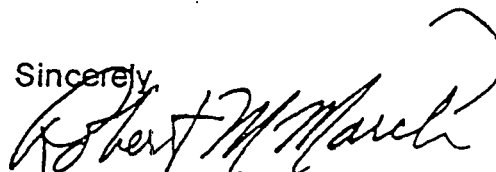
RE: Case No. CIV 99 00327 ...

The above numbered case has been randomly selected and administratively assigned -- to Magistrate Judge RONALD S. SWEET to conduct all proceedings, including the ultimate trial if necessary. Because of the dramatic increase in the number of criminal cases in recent years, District Judges have had to give priority to the criminal docket as required by law. Under these circumstances, your case can experience a significant delay, which can result in cost increases, before it can be tried before a District Judge. Congress' enactment of the Civil Justice Reform Act has required the court to give increased attention to addressing costs and delays in resolving civil disputes. The Judicial Conference of the United States has encouraged the designation of Magistrate Judges to conduct all proceedings in civil cases, both jury and non-jury.

Trial before a Magistrate Judge, in addition to an earlier trial date, will also enable the Court to give counsel and the parties a special setting. Appeal from a judgment entered by a Magistrate Judge in these consent cases will be to the Court of Appeals for the Tenth Circuit.

It is the responsibility of the case filer to serve, with summons and complaint, a copy of the Consent form upon all parties. The Consent form will be provided by the Clerk at the time the case is filed. Pursuant to the Order of the Court, counsel or pro se parties are required to return the attached Consent form to the Clerk's Office within twenty (20) days of service.

Sincerely,



ROBERT M. MARCH  
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

Plaintiff(s),

vs.

CIVIL NO.

CIV 99 00327

Defendant(s).

**CONSENT TO PROCEED BEFORE A U.S. MAGISTRATE JUDGE**

In accordance with 28 U.S.C. §636(c) and Rule 73(b) of the Federal Rules of Civil Procedure, the undersigned counsel of record consents to have \_\_\_\_\_  
\_\_\_\_\_ conduct all further proceedings in this case, including bench or jury trial, and order the entry of final judgment.

Signed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

\_\_\_\_\_  
Attorney for

MAGISTRATE JUDGES DO NOT CONDUCT TRIALS IN FELONY CASES. ACCORDINGLY, IF THIS CASE IS TRANSFERRED ON CONSENT TO THE MAGISTRATE JUDGE, MAJOR CRIMINAL CASES WILL NOT INTERFERE WITH ITS SCHEDULING AND PROCESSING. IN ALL LIKELIHOOD, THEREFORE, A CONSENT WILL MEAN THAT THIS CIVIL CASE WILL BE RESOLVED SOONER AND MORE INEXPENSIVELY FOR THE PARTIES.

**REFUSAL TO CONSENT TO PROCEED BEFORE A U.S. MAGISTRATE JUDGE**

In the event you are unwilling to consent, sign below.

Signed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

\_\_\_\_\_  
Attorney for

PLEASE READ THE REVERSE SIDE FOR FURTHER INFORMATION

*THIS FORM SHOULD BE RETURNED TO THE CLERK OF COURT  
WITHIN TWENTY (20) DAYS FROM RECEIPT THEREOF*

WESTERN ENVIRONMENTAL LAW CENTER  
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Fax. (505) 751-1775  
Attorneys for the Plaintiffs

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

99 MAR 25 AM 11:06

*Don J. Svet*  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

AMIGOS BRAVOS, a nonprofit corporation,  
and NEW MEXICO CITIZENS FOR CLEAN AIR  
AND WATER, a nonprofit corporation,

Plaintiffs,

vs.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, Carol Browner, Administrator  
of the Environmental Protection Agency, Greg Cook, EPA  
Regional Administrator for Region VI,

Defendants.

Civil Action No. \_\_\_\_\_

CIV 99 0 0327

DON J. SVET

DEPUTY CLERK

COMPLAINT

INTRODUCTION

1. Plaintiffs bring this civil action for declaratory and injunctive relief against the United States Environmental Protection Agency ("EPA" or "Defendants") and against named officials of that agency for their failure to perform non-discretionary duties under the Federal Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. §§ 1251 to 1387.

2. This action seeks to compel the EPA to take enforcement action against the Union Oil of California Molycorp Questa Molybdenum Mine ("Molycorp") for illegal discharges of pollutants into the Red River.

3. Molycorp operates a mine in northern New Mexico adjacent to the Red River. Mining operations at the Molycorp mine include an open pit, old and new underground mining areas, a mill site, tailings storage ponds, and waste rock dumps. The mine has generated nearly 300 million tons of waste rock material which it has compiled into six separate "waste rock dumps" along the Red River.

4. Molycorp is illegally discharging pollutants such as acids and heavy metals from these waste rock dumps into the Red River without a permit.

5. Under the Clean Water Act, the discharge of pollutants from a point source into the navigable waters of the United States is prohibited unless authorized by a National Pollution Discharge Elimination System ("NPDES") permit.

6. Molycorp does not have an NPDES permit for the discharges of pollutants from their waste rock dumps. These illegal discharges from Molycorp's waste rock dumps are having a significant, adverse effect on water quality in the Red River.

7. The EPA recently confirmed the existence of illegal discharges from Molycorp's waste rock dumps in a February 13, 1998 report entitled, "Report on Hydrological Connection Associated With Molycorp Mining Activity, Questa, New Mexico" ("EPA Report").

8. The EPA Report concluded that: (1) discharges of pollutants from Molycorp's waste rock dumps are entering the Red River; (2) these discharges are the primary and most incessant source for metals loading to the Red River; and (3) Molycorp is required to obtain an NPDES

permit for their waste rock dumps because they are discharging pollutants into the Red River.

9. Despite their own finding and conclusions that Molycorp's waste rock dump discharges are unpermitted, illegal point source discharges requiring an NPDES permit, the EPA has failed to take any enforcement action.

10. The EPA's decision not to take any form of enforcement action against a known, illegal discharge of pollutants into the Red River is a violation of their non-discretionary duties under the Clean Water Act.

11. Accordingly, Plaintiffs bring this action under the Clean Water Act to compel the EPA to take the required enforcement action against Molycorp to prevent the illegal and harmful discharge of pollutants from Molycorp's waste rock dumps into the Red River.

#### JURISDICTION AND VENUE

12. This action arises under the Clean Water Act, 33 U.S.C. §§ 1251-1387. This Court has jurisdiction over this matter pursuant to section 505 of the Clean Water Act, 33 U.S.C. §1365(a). Plaintiffs have a right to bring this action pursuant to section 505(a)(2), 33 U.S.C. § 1365 (a)(2).

13. The relief requested is authorized pursuant to 33 U.S.C. §§1319, 1342, 1365(a).

14. Venue is proper in this Court pursuant to 33 U.S.C. §1365(c)(1) because the Federal District Court for the District of New Mexico is the judicial district in which the illegal discharge is taking place.

15. On August 4, 1998, Plaintiffs served, by certified mail, a 60-day notice of intent to file a citizen suit for failure of the Administrator of the EPA to perform a non-discretionary duty

under the Clean Water Act in compliance with Section 505(b) of the Clean Water Act, 33 U.S.C. §1365(b).

16. More than sixty days have passed since these notices were served, and the violations complained of in the notices are continuing. Neither EPA nor the New Mexico Environmental Department ("NMED") have commenced corrective action and are not diligently prosecuting a court action to redress these violations.

#### PLAINTIFFS

17. Plaintiff Amigos Bravos sues on behalf of itself and its members. Amigos Bravos is a non-profit corporation organized under the laws of the State of New Mexico. Amigos Bravos is a member organization with over 1100 members throughout New Mexico. Several members of Amigos Bravos live in Questa, New Mexico, and some of these members have served as officers and directors of Amigos Bravos. Amigos Bravos is dedicated to protecting and restoring the Rio Grande watershed and its tributaries, including the Red River. In 1988, Amigos Bravos was formed to protect the Rio Grande and Red River Wild and Scenic Rivers as designated by Congress in 1968. Amigos Bravos works with its members to protect and restore the Red River watershed. For this purpose, Amigos Bravos engages in various activities including public outreach and education, social and scientific research, and advocacy. Members of Amigos Bravos use and enjoy the Red River adjacent to and downstream of the MolyCorp mine for irrigation, livestock watering, fishing, recreation, spiritual pursuits, and aesthetic interest. The discharges referred to in this complaint adversely affect the interests of Amigos Bravos and its members.

18. Plaintiff New Mexico Citizens for Clean Air and Water ("New Mexico Citizens")

sues on behalf of itself and its members. New Mexico Citizens is a non-profit corporation organized under the laws of the State of New Mexico. New Mexico Citizens has over 1,500 members throughout New Mexico including members in the Red River watershed. New Mexico Citizens is dedicated to protecting New Mexico's air and water resources, and has long been involved in issues regarding the MolyCorp mine. New Mexico Citizens works with its members to protect air and water resources in New Mexico. For this purpose, New Mexico Citizens conducts economic and scientific research, participates in state and interstate regulatory proceedings and commissions, evaluates and enforces compliance with environmental laws, and advocates for environmental laws and regulations. Members of New Mexico Citizens use and enjoy the Red River adjacent and downstream of the MolyCorp mine for irrigation, livestock watering, fishing, recreation, spiritual development, and aesthetic interests. The discharges referred to in this complaint adversely affect the interests of New Mexico Citizens and its members.

#### DEFENDANTS

19. The United States Environmental Protection Agency ("EPA") is an executive agency of the United States government. Defendant Carol Browner is sued in her capacity as the Administrator of the United States Environmental Protection Agency. Defendant Greg Cook is sued in his capacity as Acting Regional Administrator of USEPA Region VI, which includes the state of New Mexico. Some of the duties complained of herein have been delegated by the Administrator to Regional Administrator Cook. Defendants, individually or collectively, are charged with implementation of the Clean Water Act, and have taken or failed to take the actions challenged in this Complaint.

## THE RED RIVER WATERSHED

20. The Red River watershed is located in Taos County in north central New Mexico. A major tributary of the Rio Grande, the Red River arises in the Taos range of the Sangre de Cristo Mountains in northern New Mexico. The Red River watershed covers approximately 226 square miles and its headwaters lie almost entirely within the Carson National Forest.

21. The geology of the Red River watershed is characterized by a mineralized zone resulting from volcanic intrusions into earlier rock formations. These intrusions contain sulfur-bearing minerals, including large quantities of pyrite, an iron sulfide compound which produces sulfuric acid when exposed to air and water. Areas of this rock have been exposed by natural erosion but historically have had little or no effect on water quality or fisheries in the Red River.

22. The Red River is a gaining stream (i.e. the River gains volume from influxes of groundwater) for its entire length. Ground water moves through alluvium (loose sands, gravels, and clays) and fractures in bedrock in the side canyons to emerge in springs and seeps along the River.

23. Until the mid 1960s, water quality in the Red River watershed, including several tributaries with historic mining operations, was very good. Indeed, the Red River watershed, including the tributaries and main stem, were once considered a premier blue ribbon trout fishery. This is precisely why, in 1941, the New Mexico Game and Fish Department ("NMGFD") located the largest trout hatchery in the state two miles below Questa. In 1966, the U.S. Department of Health, Education, and Welfare ("HEW") reported that water quality in the Red River between the towns of Red River and Questa was "exceptional" and the biological condition was "good." According to the New Mexico Environmental Department ("NMED"), in the 1950s and 1960s

the Red River was only slightly affected by acidic-metal loaded drainage from natural erosional scars and historic mining operations on the headwater tributaries and main stem.

24. Today, the Red River is experiencing significant water quality problems.

Designated uses on the Red River under New Mexico's water quality standards include coldwater fishery, irrigation, livestock watering, wildlife habitat, and secondary contact. However, NMED found that these uses are not fully supported or are threatened due to the influx of pollutants to the River. The most incessant and wide-spread effect to the Red River's water quality is from the influx of fluids with low pH and high metal concentrations which are delivered to the River via ground water transport to seeps along the River.

#### THE MOLYCORP MINE AND ITS WASTE ROCK DUMPS

25. The Molycorp mine, which includes an open pit, old and new underground mining areas, waste rock dumps, a mill site and associated tailings storage ponds, is located four miles above Questa, New Mexico, and twelve miles above the confluence of the Red River and the Rio Grande. The mine site is located in a complex geological setting defined by a mountainous terrain which is cut by deep canyons. The region's steep slopes directs all surface water runoff, and shallow ground water, to the Red River.

26. In 1920, Molycorp commenced small scale underground mining at the site, milling about 50 tons per day of ore to produce molybdenum, an element used in strengthening steel.

27. In 1965, Molycorp abandoned the underground mining and switched to open pit surface mining operations. To obtain access to the subsurface molybdenum deposits Molycorp removed an enormous amount of surface material which it deposited in large piles. These piles

are referred to as "waste rock dumps." To date, Molycorp has covered approximately 500 surface acres adjacent to the Red River with nearly 300 million tons of this waste rock material.

28. Between 1965 and the present, Molycorp placed this waste rock material in six piles at the mine site: (1) Capulin Canyon Waste Rock Pile where Molycorp has placed approximately 26 tons of waste rock in the upper portion of Capulin Canyon; (2) Goathill Gulch/Goathill Gulch South Waste Rock Piles where Molycorp has placed approximately 25 tons of waste rock in the upper portion of Goathill Gulch; (3) Sugar Shack South Waste Rock Pile where Molycorp has placed approximately 53 tons of waste rock in an unidentified side canyon on the north side of the Red River; (4) Sugar Shack West Waste Rock Pile where Molycorp has placed approximately 31 tons of waste rock in an unidentified side canyon on the north side of the Red River; (5) Middle Waste Rock Pile where Molycorp has placed approximately 46 tons of waste rock in an unidentified side canyon the north side of the Red River; and (6) Spring and Sulphur Gulch Waste Rock Pile where Molycorp has placed approximately 111 tons of waste rock in Spring and Sulphur Gulches.

29. Leachate from these waste rock dumps is extremely acidic (average pH 2.8). The acidic water, or "acid mine drainage," dissolves and transports a wide range of metals in the waste rock, including iron, aluminum, cadmium, cobalt, chromium, copper, molybdenum, manganese, nickel, lead, and zinc, through the waste rock dumps and into ground water in the bedrock and alluvial aquifers beneath the piles.

30. The ground water flows through the bedrock and alluvial aquifers below the waste rock piles to springs and seeps that feed into the Red River via a hydrological connection between the waste rock discharges into groundwater and the surface water of the Red River.

31. These groundwater discharges are causing significant environmental degradation and harm to the Red River by increasing low pH and high metal loadings to the River.

32. Molycorp has not taken any steps to control the extremely harmful and illegal discharges of acid mine drainage from the Sugar Shack South, Sugar Shack West, Middle, Goathill Gulch, and Sulphur Gulch/Spring Gulch waste rock piles. Molycorp has constructed a sump below the Capulin Canyon waste rock pile to collect seepage and surface flow, but the sump does not capture all the acid mine drainage from the waste rock pile.

33. The discharges of pollutants from the Sugar Shack South, Sugar Shack West, Middle, Sulphur Gulch/Spring Gulch, Goathill Gulch, and Capulin Canyon waste rock piles into the Red River are unpermitted discharges that are not included in Molycorp's NPDES permit.

34. The EPA did issue an NPDES Permit, No. NM0022306, to Molycorp in September of 1993 for the discharge of pollutants from Molycorp's tailings ponds in Questa and two discharges at the mine site. However, this NPDES permit, which expired on October 14, 1998, never included the discharges of pollutants from Molycorp's waste rock dumps.

35. Molycorp applied for a renewal of NPDES Permit No. NM0022306 in April of 1998 but failed to include the discharges from the waste rock dumps in this application. As of the date of this complaint, the EPA has yet to issue a new permit.

#### THE EPA'S REPORT

36. On February 13, 1998, the EPA, Region 6, issued a report entitled "Report on Hydrological Connection Associated with Molycorp Mining Activity, Questa, New Mexico,"

dated February 13, 1998 ("EPA Report"). The objective of the EPA Report was to determine if Molycorp's mining activities along the Red River are resulting in the discharge of acidic, metal laden ground water to surface water via seeps along the Red River through a ground water hydrological connection.

37. According to the EPA's report, the acidic, high metal seeps, which exist within the Molycorp mine boundary, are the principal cause for metals loading to the Red River.

38. The EPA found that the most significant water quality degradation occurs within the middle reach of the Red River between Questa and the town of Red River, which contains the Molycorp mine.

39. After a thorough and comprehensive investigation, the EPA report concluded that: (a) discharges from Molycorp's waste rock dumps are hydrologically connected to the seepages into the Red River; (b) that the seepages are the primary and most incessant source for metals loading to the Red River; and (c) that a documented ground water hydrological connection between a source and surface water discharge is a "point source" requiring an NPDES permit under the Clean Water Act.

40. Based upon EPA's own findings and conclusions, Molycorp's waste rock dump discharges are illegal, unpermitted point source discharges that are having a significant, adverse effect on the Red River's water quality.

#### THE LEGAL FRAMEWORK OF CLEAN WATER ACT

41. The goal of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a).

42. In furtherance of this goal, it is illegal, pursuant to 33 U.S.C. § 1311, for "any person to discharge any pollutant" unless they have a National Pollution Discharge Elimination System ("NPDES") permit. 33 U.S.C. § 1311.

43. For purposes of the Clean Water Act, the term "person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

44. For purposes of the Clean Water Act the term "discharge of a pollutant" is defined as "any addition of any *pollutant* to *navigable waters* from any *point source*." 33 U.S.C. § 1362(12)(emphasis added).

45. A "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. 33 U.S.C. § 1362 (6).

46. The term "navigable waters" is defined broadly to mean the waters of the United States, including territorial seas. 33 U.S.C. § 1362 (7). Rivers are considered "navigable waters" under the Clean Water Act.

47. The term "point source" means any "discernable, confine and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container,.....from which pollutants are or may be discharged." 33 U.S.C. § 1362 (14). A documented ground water hydrological connection between a source and surface water discharge is a "point source."

48. The NPDES permit process for the "discharge of pollutants" is the principal

enforcement mechanism of the Clean Water Act. If the EPA finds that any person is "discharging a pollutant" without an NPDES permit then the Administrator "*shall* issue an order requiring such person to comply with such section or requirement, or he/[she] *shall* bring a civil action...." 33 U.S.C. § 1319 (a)(3)(emphasis added).

49. The EPA "may....issue an NPDES permit for the discharge of any pollutant" pursuant to section 402(a)(1), 33 U.S.C. § 1342(a)(1), or prohibit the discharge of any unpermitted pollutant pursuant to section 301(a), 33 U.S.C. § 1311(a). The EPA cannot exempt a person who "discharges a pollutant" from the NPDES permit program.

## DEFENDANT'S VIOLATIONS OF THE CLEAN WATER ACT

### COUNT I

50. Plaintiffs repeat and incorporate by reference the allegations of all foregoing paragraphs.

51. The Clean Water Act section 309(a)(3), 33 U.S.C. § 1319(a)(3), clearly states that, "[w]henever on the basis of any information available to him/[her] the Administrator finds that any person is in violation of Section 1311.....he/[she] *shall* issue an order requiring such person to comply with such section or requirement, or he/[she] *shall* bring a civil action....." 33 U.S.C. 1319(a)(3)(emphasis added).

52. Defendants are aware that Molycorp is "discharging a pollutant" without an NPDES permit in violation of section 301, 33 U.S.C. § 1311.

53. Defendants are aware that the discharges from Molycorp's waste rock dumps constitute the "addition of pollutants."

54. Defendants are aware that the discharges from Molycorp's waste rock dumps are entering "navigable waters" of the United States. Defendants documented that discharges from Molycorp's waste rock dumps are migrating via a hydrological connection from groundwater beneath the waste rock dumps to the Red River--a navigable water.

55. Defendants are aware that the discharges from Molycorp's waste rock piles are occurring from a "point source" because, in the Defendant's own words, a documented groundwater hydrological connection between a source and surface water discharge, as is the case with the discharges from Molycorp's waste rock dumps, is a point source.

56. Thus, Defendants have failed to fulfill their non-discretionary duty under the Clean Water Act to take enforcement action pursuant to section 309(a)(3), 33 U.S.C. § 1319(a)(3), regarding the illegal discharges of pollutants from Molycorp's waste rock dumps. The EPA must issue Molycorp a compliance order or file a civil action against Molycorp pursuant to 33 U.S.C. § 1319 (a)(3). The EPA cannot ignore a known, illegal discharge of pollutants into the Red River.

## COUNT II

57. Plaintiffs repeat and incorporate by reference the allegations of all foregoing paragraphs.

58. The Clean Water Act states that the EPA "may....issue an NPDES permit for the discharge of any pollutant" pursuant to section 402(a)(1), 33 U.S.C. § 1342(a)(1), or prohibit the discharge of any unpermitted pollutant pursuant to section 301(a), 33 U.S.C. § 1311(a). The EPA does not have discretion to exempt persons who "discharge pollutants" from any or all requirements of the Clean Water Act.

59. The EPA is aware that Molycorp is illegally discharging pollutants into the Red River.

60. Thus, Defendants have failed to fulfill their non-discretionary duty under the Clean Water Act by failing to either issue an NPDES permit for Molycorp's illegal discharges from their waste rock dumps pursuant to section 402, 33 U.S.C. § 1342, or prohibit the illegal discharges of pollutants from Molycorp's waste rock dumps pursuant to section 301, 33 U.S.C. § 1311.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

#### COUNT I

1. Declare that the United States Environmental Protection Agency has violated and continues to violate their non-discretionary duty under the Clean Water Act, pursuant to section 309(a)(3), 33 U.S.C. § 1319 (a)(3), to take enforcement action regarding a known, illegal discharge of pollutants from Molycorp's waste rock dumps.

2. Order the United States Environmental Protection Agency to take enforcement action pursuant to section 309(a)(3), 33 U.S.C. § 1319(a)(3), by either issuing Molycorp a compliance order or bringing a civil action against Molycorp for the illegal discharge of pollutants from Molycorp's waste rock dumps.

#### COUNT II

3. Declare that the United States Environmental Protection Agency has violated and continues to violate their non-discretionary duty under the Clean Water Act, pursuant to sections

301 and 402, 33 U.S.C. §§ 1311 and 1342, to either to issue a NPDES permit to Molycorp for the discharge of pollutants from their waste rock dumps or prohibit the illegal discharge of pollutants from Molycorp's waste rock dumps.

4. Order the United States Environmental Protection Agency to either issue Molycorp an NPDES permit for the discharge of pollutants from their waste rock dumps pursuant to section 402, 33 U.S.C. § 1342; or prohibit the illegal discharge of pollutants from Molycorp's waste rock dumps pursuant to section 301, 33 U.S.C. § 1311.

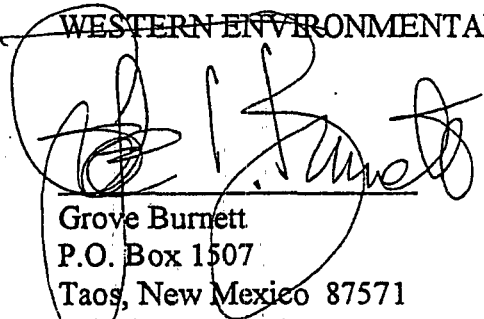
#### ALL COUNTS

5. Award Plaintiffs their costs of litigation, including reasonable attorney and expert witness fees pursuant to section 505 (d) of the Clean Water Act, 33 U.S.C. § 1365 (d).

6. Grant such additional relief as the Court deems just and proper.

Respectfully submitted this 25 day of March, 1999.

~~WESTERN ENVIRONMENTAL LAW CENTER~~



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Attorneys for Plaintiffs

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Attorneys for the Plaintiffs

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO  
99 MAR 26 PM 3:52  
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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

AMIGOS BRAVOS, a nonprofit corporation,  
and NEW MEXICO CITIZENS FOR CLEAN AIR  
AND WATER, a nonprofit corporation,

Plaintiffs,

vs.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, Carol Browner, Administrator  
of the Environmental Protection Agency, Greg Cook, EPA  
Regional Administrator for Region VI,

Defendants.

Civil Action No. 99-00327

**NOTICE OF ERRATA**

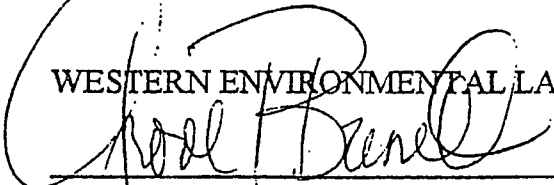
Plaintiffs hereby submit a corrected page eight (8) of their Complaint in this matter.

Subsequent to filing the Complaint in this matter Plaintiffs realized that the word "million" had inadvertently been omitted from several places in paragraph twenty-eight (28) of the Complaint.

To correct this oversight, Plaintiffs hereby submit the attached, corrected page eight (8) of their Complaint.

Respectfully submitted this 26 day of March, 1999.

WESTERN ENVIRONMENTAL LAW CENTER



---

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are referred to as "waste rock dumps." To date, Molycorp has covered approximately 500 surface acres adjacent to the Red River with nearly 300 million tons of this waste rock material.

28. Between 1965 and the present, Molycorp placed this waste rock material in six piles at the mine site: (1) Capulin Canyon Waste Rock Pile where Molycorp has placed approximately 26 million tons of waste rock in the upper portion of Capulin Canyon; (2) Goathill Gulch/Goathill Gulch South Waste Rock Piles where Molycorp has placed approximately 25 million tons of waste rock in the upper portion of Goathill Gulch; (3) Sugar Shack South Waste Rock Pile where Molycorp has placed approximately 53 million tons of waste rock in an unidentified side canyon on the north side of the Red River; (4) Sugar Shack West Waste Rock Pile where Molycorp has placed approximately 31 million tons of waste rock in an unidentified side canyon on the north side of the Red River; (5) Middle Waste Rock Pile where Molycorp has placed approximately 46 million tons of waste rock in an unidentified side canyon the north side of the Red River; and (6) Spring and Sulphur Gulch Waste Rock Pile where Molycorp has placed approximately 111 million tons of waste rock in Spring and Sulphur Gulches.

29. Leachate from these waste rock dumps is extremely acidic (average pH 2.8). The acidic water, or "acid mine drainage," dissolves and transports a wide range of metals in the waste rock, including iron, aluminum, cadmium, cobalt, chromium, copper, molybdenum, manganese, nickel, lead, and zinc, through the waste rock dumps and into ground water in the bedrock and alluvial aquifers beneath the piles.

30. The ground water flows through the bedrock and alluvial aquifers below the waste rock piles to springs and seeps that feed into the Red River via a hydrological connection between the waste rock discharges into groundwater and the surface water of the Red River.

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing Notice of Errata were served,  
along with ~~Plaintiffs'~~ Complaint, on all parties by Certified Mail on March 26, 1999.



Grove Burnett